State v. *Jones* is interesting as vitiating the special legislation enacted by the party in power, designed especially to curtail the power of "Golden Rule" Jones, mayor of Toledo, and to prevent him from carrying out his ideas of municipal reform.

DIVISION OF SURPLUS ACCUMULATIONS AS BETWEEN THE LIFE BENEFICIARY AND THE REMAINDER-MAN.

The right to dividends as between the life-tenant and the remainder-man is a subject on which the authorities are in irreconcilable conflict. This question arises most frequently under wills. As to whether cash and stock dividends, declared after the death of the testator, belong to income or should go to swell the corpus of the estate, there are in this country two widely diverging lines of decision, known respectively as the Massachusetts rule and the Pennsylvania or American rule, one of which most of the courts have adopted in whole or in part.

According to the Massachusetts doctrine, every cash dividend goes to the life-tenant, and every stock dividend belongs to the remainder-man, if accumulated from the earnings of the company, irrespective of whether such accumulation was made before or after the testator's death. This rule, so far as it applies to cash dividends, prevails in England, Maine, New York, Kentucky and Georgia; as applied to stock dividends, it prevails in England, Connecticut and Rhode Island, and it has been adopted by the United States Supreme Court. The Massachusetts doctrine seems to be a rule of convenience, easy and simple of application, but its justice and fairness may seem to be open to question. The leading Massachusetts case is *Minot* v. *Paine,* 99 Mass. 101; authorities in conformity with this decision are *Davis* v. *Jackson,* 152 Mass. 58; *Richardson* v. *Richardson,* 75 Me. 570; *Bouch* v. *Sproule,* L. R. 12 App. 385; *Brinley* v. *Grou,* 50 Conn. 66; *Gibbons* v. *Mahon,* 136 U. S. 549.

The Pennsylvania rule is that dividends of earnings made before the testator's death belong to the corpus of the estate, but that dividends earned since testator's death are income and go to the life-tenant, no matter whether such dividends be in cash, or scrip, or stock. The leading authority is *Earp's Appeal,* 28 Pa. St. 368; see also *Moss' Appeal,* 83 Pa. St. 264; *Smith's Estate,* 140 Pa. St. 340; *Van Doren* v. *Olden,* 19 N. J. Eq. 176; *Simpson* v. *Moore,* 30 Barb. 637; *Hite* v. *Hite,* 93 Ky. 264.

In view of the conflict over this subject a recent Mississippi case is of much interest by reason of facts, which present a new phase of the question. *Simpson* v. *Millsaps,* 31 So. 912. In that case the will directed that the income of the corpus of the estate be paid to certain beneficiaries for life. After testator's death the corporation, in which testator owned stock, withheld part of its earnings, which it set aside as a surplus fund; by so doing the value of its stock was increased. The trustees for the life beneficiaries sold this stock at

a price greater than was its value at testator's death. It was here held that this increased value of the stock was income, and belonged to the life beneficiaries.

The chancellor, whose decision is here reversed by the supreme court, approved the Pennsylvania doctrine, but held that this case went beyond it, in as much as the corporation had declared no dividend, for it has been universally acknowledged that a corporation may declare a dividend or not, as it in good faith elects. His reasoning that earnings may not be distributed, so long as the corporation still holds them, and that the increased value of the stock consequently was not dividends, seems cogent, if not entirely convincing. The supreme court criticises the Massachusetts doctrine, and adopts the Pennsylvania rule, but enlarges its application, holding that "whenever earnings are distributed, the life men are entitled to them, and whenever the trustees sell stocks, enhanced in value by these undistributed dividends, the enhancement, above the value at the testator's death, is, in law and equity, the property of the life beneficiaries."

There seems to be not a single decision involving the exact point here at issue. The case is decided on grounds of fairness and justice, and is so far consonant with the Pennsylvania doctrine. The court does not avow any intention of going beyond the Pennsylvania rule, but seems to think that it has simply applied that rule to a new set of facts, and that its decision is fully in accord with the principles on which that rule is based. The hardship that might be occasioned in the application of the Massachusetts rule is fully recognized; the court says: "We decline to indorse the doctrine that the question of corpus to the remainder-men, or income to the life-men, depends on the schemes of corporations or the will of their boards of directors. They may withhold dividends from stockholders and from life beneficiaries under wills to swell surplus, but they cannot adjudicate their eventual right to the dividend passed to surplus. The courts only can do this."

OBSTRUCTION TO SURFACE WATERS.

An irreconcilable difference of opinion has exhibited itself in the decisions of the courts in the United States in regard to the rights and duties of adjoining proprietors of land. Two radically different rules may be said to prevail—the civil law rule and the common law rule—as to surface waters. The subject does not seem to have received the attention of the courts until a comparatively recent date. *Bowlsby* v. *Speer,* 31 N. J. L. 351. In England in 1855 in *Rawstrom* v. *Taylor,* 11 Exch. 369, the question of rights in surface waters appears to have been discussed for the first time. This difference of opinion may be traced to the great importance attached by the courts on one side to the maxim, *"sic utere tuo ut alienum non laedas,"* whilst those adopting a contrary view seem